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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 Wendy Cheryl Gillespie,

7 Plaintiff,

8 v.

9 U.S. Department of Labor, Office of Worker's  
Compensation,

10 Defendant.

Case No. 2:22-cv-00057-JAD-DJA

11  
12 **Order**

13 Plaintiff Wendy Cheryl Gillespie is proceeding *pro se* under 28 U.S.C. § 1915. (ECF No.  
14 1). After the Court granted Plaintiff's application to proceed *in forma pauperis*, but dismissed her  
15 complaint, it provided her an opportunity to amend her complaint. (ECF No. 4). Plaintiff  
16 amended her complaint, which amendment the Court found to still be deficient under its  
17 screening standard. (ECF No. 9). The Court gave Plaintiff another opportunity to amend her  
18 complaint, which complaint Plaintiff timely amended. (ECF No. 10). The Court now screens and  
19 dismisses Plaintiff's second amended complaint without prejudice. (ECF No. 10). The Court  
finds these matters properly resolved without a hearing. LR 78-1.

20 **I. Discussion.**

21 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
22 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable  
23 claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may  
24 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
25 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard  
26 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*,  
27 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain  
28 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."

1 *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes *pro se* complaints  
2 and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts  
3 in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908  
4 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

5 In considering whether the complaint is sufficient to state a claim, all allegations of  
6 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*  
7 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1999) (citation omitted).  
8 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
9 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
10 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*  
11 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a *pro se*  
12 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s  
13 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Here, the Court dismisses Plaintiff’s second amended complaint with leave to amend. As  
15 an initial matter, Plaintiff’s complaint is incomplete. Plaintiff did not fill out the portion of the  
16 complaint form explaining what type of jurisdiction the Court has over her claims. (ECF No. 10  
17 at 3). While she sues a federal agency, presumably under a federal statute, the Court cannot  
18 speculate the basis for her claims. Plaintiff also failed to include the type of relief she seeks. (*Id.*  
19 at 5).

20 Additionally, Plaintiff again fails to provide the factual basis for her claims. She asserts  
21 that she was let go from her employment with the U.S. Department of Homeland Security  
22 Transportation Security Administration for a left arm injury and disc protrusion injury. (*Id.* at 4).  
23 But other than an explanation about why she included certain facts in her last amended complaint,  
24 her allegation that she was let go from her former job is the extent of her allegations. As the  
25 Court has pointed out before, Plaintiff cannot rely on a previous complaint to make her current  
26 complaint whole. But even referencing her prior complaints, it is unclear what claims Plaintiff is  
27 alleging.  
28

1 Plaintiff also cites to and attaches exhibits showing her medical records and a letter from  
2 the U.S. Department of Homeland Security relieving her of her duties. (ECF No. 10 at 7-40);  
3 (ECF No. 11). But the Court cannot speculate about which claims Plaintiff is bringing by reading  
4 through her medical records. Instead, Plaintiff must explain the basis for her claims and the facts  
5 surrounding them. For example, to the extent she is asserting that her employer violated the  
6 Americans with Disabilities Act by discriminating against her, she must expressly make that  
7 claim and allege the facts that show its elements.<sup>1</sup> Because she neither identifies her claims nor  
8 asserts any facts to support them, the Court dismisses Plaintiff's complaint with leave to amend.

9 If Plaintiff chooses to file an amended complaint, the document must be titled "Third  
10 Amended Complaint." The amended complaint must contain a short and plain statement of the  
11 grounds for the court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the amended  
12 complaint must contain a short and plain statement describing the underlying facts and each  
13 defendant's involvement in the case. *See* Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of  
14 Civil Procedure adopt a flexible pleading standard, Plaintiff still must give each defendant fair  
15 notice of her claims against them and of Plaintiff's entitlement to relief.

16 Additionally, Plaintiff is advised that if she files an amended complaint, the original  
17 complaint (ECF No. 1-2) and her amended complaints (ECF Nos. 6 and 10) no longer serve any  
18 function in this case. As such, the third amended complaint must be complete in and of itself  
19 without reference to prior pleadings or other documents. The Court cannot refer to a prior  
20 pleading or other documents to make Plaintiff's amended complaint complete.

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26 <sup>1</sup> To establish a case of disability discrimination under the ADA, a plaintiff must show: (1) she is  
27 a disabled person within the meaning of the statute; (2) she is a qualified individual with a  
28 disability; and (3) she suffered an adverse employment action because of her disability. *See*  
*Mayo v. PCC Structural, Inc.*, 795 F.3d 941, 944 (9th Cir. 2015).

1           **IT IS THEREFORE ORDERED** that Plaintiff's amended complaint (ECF No. 10) is  
2 **dismissed with leave to amend.** Plaintiff shall have until **September 8, 2022** to file an amended  
3 complaint. Failure to file an amended complaint by **September 8, 2022** could result in the  
4 recommended dismissal of this case.

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6           DATED: August 9, 2022



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE